

Ramaiah a/l Murugaiah v Sanmugam a/l Ramaiah

HIGH COURT (KUALA LUMPUR) — SUIT NO S2-22-332 OF 1997
KAMALANATHAN RATNAM JC
19 DECEMBER 1997

Land Law — *Possession — Recovery of — Land and house belong to plaintiff — Whether defendant has right to stay in plaintiff's house merely because he is plaintiff's son — Whether defendant's licence for stay expired with the time provided for in notice to give vacant possession*

The plaintiff father was the joint owner of a piece of land ('the land') and a house built on the land ('the house'). The plaintiff and his family, including his son, the defendant, lived in the house. The plaintiff complained that the defendant had chased his wife and himself out of the house. The plaintiff tendered a copy of a police report in which he stated that the defendant had demanded a sum of money before he would give vacant possession. The plaintiff sent a notice to quit and to give vacant possession of the land and house to the defendant which the latter failed to do. Consequently, the plaintiff claimed for an injunction to restrain the defendant and all others living in the land and house from entering or residing therein and to give vacant possession and for costs in the cause. The defendant contended, inter alia, as the son of the plaintiff and thus a part of the plaintiff's family, he has a right to stay in the house.

Held, allowing the application:

The defendant's contention that as the son of the plaintiff he had a right to stay in the house was based on wrong premise. The defendant was no longer a dependant of the plaintiff. Since the land and house belonged to the plaintiff and since the defendant had given no other basis for remaining thereon except for the fact that he was part of the plaintiff's family, the plaintiff's application should be allowed. Moreover, the defendant's licence for stay expired with the time provided for in the notice to give vacant possession. If there was to be any extension of time to be given to the defendant, it could only be by the grace of the plaintiff (see pp 241D-E and 242E); *Egan v Egan* [1975] 2 All ER 167 followed.

[Bahasa Malaysia summary]

Plaintif iaitu si bapa adalah pemilik bersama sebidang tanah ('tanah tersebut') dan sebuah rumah yang didirikan atasnya ('rumah tersebut'). Plaintiff dan keluarganya, termasuk anak lelakinya, iaitu defendan, tinggal di rumah tersebut. Plaintiff mengadu bahawa defendan telah mengusir isterinya dan plaintiff sendiri dari rumah tersebut. Plaintiff mengemukakan sesalinan laporan polis di mana ia mengatakan bahawa defendan telah menuntut sejumlah wang sebelum memberi milikan kosong. Plaintiff telah menghantar satu notis untuk

- A keluar dan untuk memberi milikan kosong tanah tersebut dan rumah tersebut kepada defendan yang tidak dilakukan olehnya. Berikutnya, plaintif menuntut suatu injunksi bagi menahan defendan dan semua yang lain yang tinggal atas tanah tersebut dan di rumah tersebut daripada memasuki atau menetap di situ dan untuk memberi milikan kosong dan untuk kos mengikut kausa. Defendan menghujahkan, antara lain, sebagai anak lelaki plaintif dan justeru itu sebahagian daripada keluarga plaintif, ia berhak kekal di rumah tersebut.
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Diputuskan, membenarkan permohonan:

- C Hujah defendan bahawa sebagai anak lelaki plaintif ia berhak tinggal di rumah adalah berdasarkan premis yang salah. Defendan tidak lagi merupakan seorang tanggungan plaintif. Oleh kerana tanah dan rumah adalah kepunyaan plaintif dan memandangkan defendan tidak memberikan sebarang dasar lain untuk kekal di situ melainkan hakikat bahawa ia merupakan salah satu ahli keluarga plaintif, permohonan plaintif seharusnya dibenarkan. Tambahan pula, lesen defendan untuk penggantungan telah tamat tempohnya dengan masa yang diperuntukkan dalam notis untuk memberi milikan kosong. Andainya perlanjutan masa perlu diberikan kepada defendan, ia cumalah dengan izin plaintif (lihat ms 241D-E dan 242E); *Egan v Egan* [1975] 2 All ER 167 diikuti.]
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Notes

For a case on recovery of possession, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) para 2188.

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Case referred to

Egan v Egan [1975] 2 All ER 167 (folld)

Mazridzuan bin Mohamad (Mazlinda, Azlina & Co) for the plaintiff.
Nur Hafizah bte Mohd Saleh (Umar Baki & Co) for the defendant.

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Cur Adv Vult

Kamalanathan Ratnam JC:

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Facts

This is a sad tale of a father and his son. The plaintiff father is the joint owner of a piece of land known as EMR 10 Lot 2735 Mukim Ampang, Daerah Selangor ('the said land') with one P Govindammal. There are two houses built on the said land. The plaintiff's house on the said land is known as 103A Lorong Kg Pandan, Kuala Lumpur ('the said house'). The plaintiff, his wife and family which included his son, the defendant, lived in the said house.

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The plaintiff's case

The plaintiff complained that the defendant had chased his wife and himself out of the said house. In his affidavit in support, the plaintiff contended that about five years ago, the defendant began abusing and assaulting both himself and his wife. They were not given proper food or a place to sleep. The conduct of the defendant was such that his other children all moved out of the house and did not care for them. The defendant assaulted him until he bled and demanded that the plaintiff transfer the said land and house to him. The plaintiff annexed a copy of a police report to his affidavit in which he stated that the defendant had demanded a sum of RM7,000 before he gave vacant possession. They now live with their youngest son in a room in Bangsar, Kuala Lumpur. The plaintiff sent a notice to quit and to give vacant possession of the said land and house through his solicitor's letter dated 30 June 1997. To date, the defendant having failed to do so, the plaintiff now claims for an injunction to restrain the defendant and all others living in the said land and house from entering or residing therein and to give vacant possession and for costs in the cause.

The plaintiff then took out a summons by way of encl 3 seeking the same prayers as pleaded in his statement of claim and gave an undertaking as to damages.

Case for the defence

The defendant appeared in person before me on 19 August 1997 without having filed an affidavit. Upon my advice to retain counsel to assist him in filing an affidavit, he applied by way of an application (encl 8) through counsel for leave to file a reply out of time. On 21 October 1997, encl 8 was heard by the deputy registrar and since the plaintiff had no objections, leave was granted. In his affidavit in reply (encl 10), the defendant contended that the plaintiff's ownership of the said land had ceased as of 29 July 1997 and that, as of that date, the plaintiff was no longer the owner of the said land on which the said house was. He denied the alleged assaults and abuses and averred that he took care of the plaintiff and his wife as he would take care of his own children. He was a taxi driver and had a wife and five children who were schooling. He further averred that on 22 April 1997, his youngest brother took away the plaintiff and his wife to live with him in Bangsar. It was intended that the parents were to live with his youngest brother for one or two months only but however they continued to remain with him to date. He further contended that the police report lodged was for the purpose of confusing the issues. Contending that encl 3 was an abuse of the process of the court, he asked that it be dismissed with costs.

Court's findings

In his defence, the defendant has contended that the plaintiff's title to the said land had expired on 29 July 1989. However, in his affidavit in reply

- A** (encl 10), the defendant had averred that it had expired on 29 July 1997. Since both the defence and encl 10 are dated 22 October 1997, this discrepancy has not been explained, either by way of an affidavit or in the oral submission before me. Whilst exh RM-1 annexed to the plaintiff's affidavit clearly states that the said land was registered on 20 August 1966 for a period of 30 years and shall terminate on 29 July 1989, it would seem that there is some evidence within the knowledge of the defendant that there has been further extension granted, since he has averred that it had expired on 29 July 1997. I therefore am constrained to dismiss this argument. In any case, exh RM-2 which is the notice of assessment for the said land for the year 1997 is in the name of the plaintiff and the receipt stamped on it shows that the plaintiff has paid the said sum. It is therefore my finding that for the purposes of encl 3, this submission of the defence must perforce fail.

Has the defendant a right to stay

- D** The defendant's contention that he, being the son of the plaintiff and thus being part of the plaintiff's family, gives him a right to stay in the said house is based on wrong premise. The defendant is no longer a dependant of the plaintiff. On his own admission, he is a taxi driver and married with five children. Since I have found that the land and house belong to the plaintiff and since the defendant has given no other basis for remaining thereon except for the fact that he is part of the plaintiff's family, I have no hesitation in allowing the plaintiff's application.

- F** The plaintiff has, in his further affidavit filed in reply, exhibited a bill from Tenaga Nasional Bhd, which bill incidentally is still in his name, for a sum of RM603.47 for electricity used by the defendant from 8 January 1997 to 15 September 1997. The defendant has not to date paid this bill. The plaintiff understands that the electricity has been cut. The defendant filed a further affidavit denying that the electricity has been cut. He however has provided no documentary evidence to show that the said bill has been settled.

- G** In *Egan v Egan* [1975] 2 All ER 167, the court had to consider a case based on similar facts as those before me. The defendant, who was aged 19, lived with the plaintiff, his mother, in her council house. While living there, the defendant continually assaulted and maltreated the plaintiff and extracted money from her by physical violence. He refused to contribute to the household expenses and failed to maintain regular employment.
- H** The plaintiff suffered injury to her health as a result of the physical assaults. The defendant threatened that if the plaintiff tried to exclude him from the house, he would force his way back in. The plaintiff brought an action against the defendant and applied by way of interlocutory relief for an order that the defendant vacate the house and injunctions restraining him until trial of the action or further order from: (a) being or remaining in or entering the house; and (b) assaulting, molesting, annoying or otherwise interfering with the plaintiff. The court held that although the case was one between parent and child, the circumstances were such that
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an injunction should be granted restraining the defendant from continuing to trespass in the house after his licence had been withdrawn. Furthermore, there was no reason why in a proper case the court should not grant an injunction restraining the commission of assaults. Against the background of a clear threat of further assault, the case was one in which such an order was appropriate. Accordingly, an order was made granting the relief sought.

In this case, there is no prayer to restrain the defendant from assaulting the plaintiff. I am however moved to grant the prayers actually sought by the plaintiff in encl 3.

It is inconceivable that a father would lodge a false police report and affirm a false allegation of assault against his own son. If as averred and pleaded by the defendant, the plaintiff and his wife had gone to live with their youngest son for only one or two months, there ought to have been no reason for this aged couple not to have returned to their own house where the defendant was living, unless of course they were not welcome in their own home.

Even the liberal-minded western culture forbids the type of acts perpetrated by the defendant. However, considering the eastern culture and the very reverence we show to our elders and more importantly to parents, the actions of the defendant perpetrated against his own parents is unacceptable. I have no hesitation in accepting the evidence of the plaintiff. The defendant's licence for stay expired with the time provided for in the notice to give vacant possession. If there is to be any extension of time to be given to the defendant, it can only be by the grace of the plaintiff. On the evidence so far adduced, the plaintiff has satisfied this court of his entitlement to an order in terms of encl 3. I will now fix this case for case management to 12 January 1998.

Application allowed.

Reported by Loo Lai Mee

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